

Anti-porn spam laws to shield kids backfire

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SAN FRANCISCO -- Laws in two states to shield children from objectionable e-mail are having a chilling effect on nearly everyone but the spammers they were intended for.

The laws in Michigan and Utah create e-mail registries to prevent children from viewing adult-oriented messages. But the laws, both barely a month old, threaten to disrupt businesses nationwide, marketers and legal experts say.

Legitimate e-mail marketers are weighing the legal and financial risks of doing business in the two states. Small and midsize companies are anticipating crushing fines. And legal experts are alarmed by the potential impact on free speech and e-mail taxation.

Spammers, ironically, may be tempted to send more e-mail to those states to gain valid e-mail addresses.

"Everyone is being impacted but the spammers," says Kurt Opsahl, a staff attorney at Electronic Frontier Foundation, a non-profit civil-liberties group.

The laws' quandary illustrates the difficulty in reducing unwanted commercial e-mail, which has flourished despite a federal anti-spam law and high-profile lawsuits against spammers. About 72% of e-mail is spam, up from 68% a year ago, says e-mail security company IronPort Systems.

Many of the largest bulk e-mailers use sophisticated software to cover their tracks, often from operations overseas. "Most spammers will ignore the state laws, as they have all others," says Parry Aftab, an attorney who specializes in Internet privacy and security.

Still, other states are considering similar laws, says Michigan Sen. Mike Bishop, R-Rochester, who has fielded calls from state lawmakers.

"Legislators are trying to tell marketers they can't advertise sex, alcohol and tobacco to youngsters online just as they can't on TV or in print," says Anne Mitchell, CEO of the Institute for Spam and Internet Public Policy, a group that works with public and private sectors.

Under the new laws, parents would register their kids' e-mail addresses and birth dates with the state. The registries also include instant-messaging addresses, cellphone and pager numbers.

Businesses face steep fines if they fail to remove from their lists any e-mail addresses that parents submit. The Michigan law carries fines of up to \$5,000 per message and \$250,000 per day.

That's bad news to legitimate e-mail marketers, who dread the costs and onerous task of scrubbing their lists.

"The costs are so prohibitive, we've recommended clients consider dropping" e-mail marketing campaigns in Utah and Michigan, says Derek Harding, CEO of Innovyx, which runs e-mail marketing campaigns for Sony and Toyota.

Children could inadvertently be endangered by the laws. Opsahl and others say many spammers will bombard both states with e-mail and, based on automated e-mail warnings, discover valid addresses. Aftab wonders if spammers and pedophiles will hack into large databases of children.

Bishop concedes the law won't stop spam, but it will put a damper on unwanted e-mail aimed at kids and give the state the authority to punish violators. "We need to work out nuances in the law to make sure we don't step on toes of legitimate marketers," he says.